

Message Text

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ACTION IO-14

INFO OCT-01 IOE-00 ISO-00 AF-10 ARA-10 EA-10 EUR-12
NEA-10 OIC-02 HA-05 HEW-04 AID-05 TRSE-00 SS-15
NSC-05 SP-02 L-03 CIAE-00 INR-07 NSAE-00 PRS-01
PA-01 USIA-06 CU-04 /127 W
-----087450 202032Z /46

P R 201950Z JAN 78
FM AMEMBASSY PARIS
TO SECSTATE WASHDC PRIORITY 4573
INFO USMISSION GENEVA
USMISSION USUN

C O N F I D E N T I A L SECTION 01 OF 03 PARIS 01904

NESCO

E.O. 11652: GDS
TAGS: AORG, OCON, PORG, SHUM, UNESCO
SUBJECT: UNESCO: UNESCO WORKING GROUP ON STRENGTHENING
HUMAN RIGHTS PROCEDURES, JANUARY 9-20-1978,
PARIS

REF: PARIS 01281
BEGIN SUMMARY: THIS IS THE WRAP-UP CABLE ON WORK OF
WORKING GROUP (WG) WHICH CONCLUDED ITS FORMAL DELIB-
ERATIONS ON THURSDAY, JANUARY 19, 1978, WITH THE
ADOPTION OF A DRAFT RESOLUTION, CONTAINING PROCEDURES
FOR DEALING WITH COMMUNICATIONS CHARGING VIOLATIONS OF
HUMAN RIGHTS FALLING WITH UNESCO'S FIELDS OF COMPETENCE,
, WHICH IS TO BE SUBMITTED TO THE EXECUTIVE BOARD AT
ITS 104TH SESSION IN MAY (DOC. 104/EX/WG/HR4.) THE
DRAFT RESOLUTION WAS ADOPTED BY CONSENSUS AND CONTAINS
NO RESERVATIONS, ALTERNATIVE PROVISIONS OR MINORITY
VIEWS. THE TEXT OF DOC. 104/EX/WG/HR 4 IS BEING
TRANSMITTED TO DEPARTMENT BY SEPTEL. USDEL SUCCEEDED
IN OBTAINING A FINAL TEXT CONSISTENT WITH INSTRUCTIONS
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CONTAINED IN STATE 011843 AND 004693. THE MOST
SIGNIFICANT RESULTS CONCERN THE METHODS AGREED UPON FOR
DEALING WITH COMMUNICATIONS, THE ROLE OF THE SECRE-
TARIAT, AND THE ISSUE OF CONFIDENTIALITY.
END OF SUMMARY.

1. UNDER THE PROCEDURE AGREED UPON, ALL COMMUNICATIONS,

WHETHER RELATING TO INDIVIDUAL CASES (PARA 10(A)) OR QUESTIONS OF MASSIVE VIOLATIONS (PARA. 10(B)) ARE HANDLED IN AN IDENTICAL MANNER AT THE ADMISSIBILITY STAGE (SEE PARAS. 14(A) AND 14(B)). MOREOVER, IDENTICAL RULES ALSO APPLY TO THE EXAMINATION OF THE MERITS OF CASES AND QUESTIONS BY THE COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS (CCR). THUS, FOR EXAMPLE, THE FRIENDLY SETTLEMENT PROVISIONS OF PARA. 14(K), THE FINAL DECISION REGARDING NON-MERITORIOUS COMMUNICATIONS (PARA. 14(J), AND THE RULES CONCERNING CONFIDENTIALITY (PARA. 14(C), 15 AND 16) APPLY EQUALLY TO INDIVIDUAL CASES AND QUESTIONS OF MASSIVE VIOLATIONS. (THE USDEL WAS ABLE TO PRESERVE THIS PROCEDURAL FRAMEWORK DESPITE SOVIET EFFORTS TO ESTABLISH DIFFERENT CCR PROCEDURES FOR DEALING WITH QUESTIONS.

2. UNDER THE RULES AS ADOPTED A DIFFERENT PROCEDURE APPLIES TO QUESTIONS (PARA. 18) ONLY AFTER A COMMUNICATION HAS BEEN TRANSMITTED BY THE CCR TO THE EXECUTIVE BOARD AND AFTER THE BOARD HAS MADE A PRELIMINARY DETERMINATION THAT A QUESTION OF MASSIVE VIOLATIONS EXISTS (PARA. 16 AND 17). NOTE, HOWEVER, THAT PARA. 18 USES THE WORD "SHOULD" RATHER THAN "SHALL" WHICH ENABLES THE EXECUTIVE BOARD TO AVOID PUBLIC MEETINGS EVEN UNDER THIS PROVISION.

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3. DEPARTMENT WILL NOTE THAT, EXCEPT FOR PARA. 18, THE PROCEDURES ADOPTED BY THE WG SIGNIFICANTLY ADVANCE THE "DUE PROCESS" OBJECTIVES OF THE U.S. BUT UNTIL THE BOARD ADOPTS THESE PROCEDURES AT THE 104TH SESSION, THE ENTIRE STRUCTURE IS EXTREMELY FRAGILE, PARTICULARLY SINCE IT IS REASONABLE TO ASSUME THAT SOME WG MEMBERS DID NOT APPRECIATE THE FULL IMPORT OF WHAT THEY WERE AGREEING TO. IT MIGHT, THEREFORE BE WISE TO POSTPONE US "DUE PROCESS" INITIATIVE UNTIL AFTER THE WG DRAFT RESOLUTION HAS BEEN ADOPTED BY EXECUTIVE BOARD. SUCH INITIATIVE, IF TAKEN BEFORE BOARD'S CONSIDERATION OF WG DRAFT RESOLUTION, COULD JEOPARDIZE THE DRAFT.

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NSC-05 L-03 PRS-01 SP-02 PA-01 CU-04 CIAE-00
INR-07 NSAE-00 USIA-06 /127 W
-----087538 202033Z /46

P R 201950Z JAN 78
FM AMEMBASSY PARIS
TO SECSTATE WASHDC PRIORITY 4574
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BUT THE INITIATIVE, IF IT WERE TO COME AFTER ADOPTION
OF THE DRAFT, COULD POINT TO THE NEW PROCEDURES TO
BOLSTER US POSITION.

4. IN ORDER TO ACHIEVE RESULT DESCRIBED IN PARAS. 1
AND 2 ABOVE, USDEL HAD TO AGREE TO REDRAFTING OF
DEFINITION OF "QUESTIONS". ALTHOUGH THE NEW DEFINITION
(PARA. 10(B)) INCORPORATES SOVIET LANGUAGE ("MASSIVE,
SYSTEMATIC OR FLAGRANT VIOLATIONS"), IT ENABLES "AN
ACCUMULATION OF INDIVIDUAL CASES" TO CONSTITUTE SUCH
VIOLATIONS. THIS SUBSTANTIALLY WEAKENS THE EARLIER
SOVIET-POLISH DRAFT PROPOSAL (PARA. 9(B)) OF DOC.
104 EX/WG/HR/1), WHICH DID NOT REFER TO "CASES AT ALL
AND WHICH, MOREOVER, WOULD HAVE PREVENTED EVEN A
PRELIMINARY CONSIDERATION OF QUESTIONS OF MASSIVE
VIOLATIONS BY THE CCR. THE LANGUAGE OF PARA. 17 OF
THE PRESENT DRAFT RESOLUTION, PARTICULARLY ITS REFORMU-
LATION AND THE PHRASE "INCLUDING, FOR EXAMPLE" FURTHER
REDUCES ITS POSSIBLE DAMAGING IMPACT.

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5. DEPT'S. ATTENTION IS DRAWN TO THE LANGUAGE OF
PARA. 8 OF THE DRAFT RESOLUTION, WHICH WAS CHANGED FROM
THE TEXT AGREED UPON IN OCTOBER (SEE PARA. 7 OF
DOC. 104 EX/WG/HR) TO INCLUDE THE PHRASE "BOTH THROUGH
THE SETTLEMENT OF CASES AND THE ELIMINATION OF MASSIVE,
SYSTEMATIC OR FLAGRANT VIOLATIONS OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS." THE ADDITION OF THE PHRASE

"SETTLEMENT OF CASES" AND THE OTHER NEW LANGUAGE CAN BE READ TO GIVE THE DG AN IMPORTANT FOLLOW-UP ROLE THAT COMES INTO PLAY AFTER THE APPLICATION OF PARA. 16 (CASES) AND PARA. 18 (QUESTIONS). IN THE FUTURE, IT MIGHT BE IN THE INTEREST OF US TO CONTRIBUTE TO THE DEVELOPMENT OF THE POSSIBILITIES INHERENT IN THIS LANGUAGE WHOSE POTENTIAL FEW, IF ANY, WG MEMBERS SEEM TO HAVE RECOGNIZED. CONSIDERING THAT THE ALTERNATIVE MIGHT HAVE BEEN A SOLUTION SIMILAR TO PARA. 15(A) AND 15(B) OF SOVIET-POLISH DRAFT, THE PRESENT RESULT IS MOST ENCOURAGING.

6. THE MOST DISCOURAGING RESULTS OF THE WG'S DELIBERATIONS RELATE TO THE PUBLICITY AND CONFIDENTIALITY ISSUES, ALTHOUGH EVEN HERE THE OUTCOME IS LESS SERIOUS THAN MIGHT HAVE BEEN EXPECTED. FIRST, UNLIKE UNDER MANY INTERNATIONAL HUMAN RIGHTS PROCEDURES, THE WG'S DRAFT PROVIDES FOR THE AUTHOR OF A COMMUNICATION TO BE INFORMED OF THE STATUS OF HIS CASE (SEE PARAS. 14(I) AND 14(J), AND BY IMPLICATION PARA. 14(K) WITHOUT THERE BEING EXPRESS OBLIGATION ON HIS PART TO PRESERVE THE CONFIDENTIALITY OF THE INFORMATION. SECOND, THE INTENTIONALLY VAGUE LANGUAGE OF PARA. 14(G) IS DESIGNED, IN EXCEPTIONAL CIRCUMSTANCES, TO ENABLE THE CCR TO HEAR THE AUTHOR OF A COMMUNICATION (BOTH WITH REGARD TO CASES AND QUESTIONS). THIRD, THE REFERENCE CONFIDENTIAL

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IN PARA. 16 TO "RULE 28" OF THE RULES OF PROCEDURE WAS INTENTIONALLY INCLUDED TO PREVENT FUTURE ARGUMENTS THAT THE CONFIDENTIAL REPORTS COULD NEVER BE PUBLISHED. CONSEQUENTLY, ALTHOUGH CONFIDENTIALITY SHROUDS THE PROCEEDINGS RELATING TO "CASES", A SMALL STEP FORWARD HAS BEEN TAKEN IN A PROCESS WHICH MIGHT IN THE FUTURE LEAD TO MORE ADVANCES. US POSITION ON THIS ISSUE WAS NOT HELPED BY OUR DESIRE TO DEVELOP A "DUE PROCESS" APPROACH FOR DEALING WITH QUESTIONS. MOREOVER, SINCE PARA. 17 ALSO APPLIES TO "ACCUMULATION OF CASES," IT SHOULD BE POSSIBLE TO USE THE PUBLICITY ENVISAGED IN THIS PROVISION IN SOME INSTANCES FOR GROUPS OF INDIVIDUAL CASES COMING FROM CERTAIN COUNTRIES.

7. IN ADDITION TO WHAT HAS BEEN SAID ALREADY ON THIS SUBJECT IN PARA. 5 ABOVE, THE WG'S DRAFT RESOLUTION CONTAINS SOME VERY IMPORTANT PROVISIONS REGARDING THE ROLE OF THE SECRETARIAT, PARTICULARLY AT THE ADMISSIBILITY STAGE (SEE PARAS. 14(B), 14(C) AND 14(F)) AS WELL AS AT LATER STAGES, PARTICULARLY IF ONE READS PARA. 14(J) TOGETHER WITH PARAS. 8(A) AND 8(B).

AN IMAGINATIVE SECRETARIAT COULD DO A GREAT DEAL TO
MAKE THESE PROCEDURES EFFECTIVE.

8. USDEL HAS ALREADY COMMENTED IN PARIS 01201 ON
CONDITIONS OF ADMISSABILITY, BUT WISHES TO EMPHASIZE
THE RISK THAT EXECUTIVE BOARD MAY DECIDE TO MAKE
THEM MORE RESTRICTIVE. THIS DANGER EXISTS PARTICULARLY

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NSC-05 L-03 PRS-01 SP-02 PA-01 CU-04 CIAE-00
INR-07 NSAE-00 USIA-06 /127 W
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WITH REGARD TO PARA. 14(A) (II). ITS SECOND SENTENCE
IS VULNERABLE, SINCE IT IS LESS RESTRICTIVE THAN
COMPARABLE PROVISIONS IN ANY EXISTING INTERNATIONAL
TEXT ON THE SUBJECT. DEPARTMENT WILL ALSO WANT TO
NOTE THAT IN PARA. 14(A), TWO PROVISIONS QUOTED IN
PARAS. 9(A) (IV) AND IX) OF PARIS 01200 HAVE BEEN
MERGED TO FORM PARA. 14(A) (III), THUS IMPROVING THE
DRAFT.

9. PARA. 14 OF THE DRAFT RESOLUTION IS AN IMPORTANT
ADVANCE OVER PRIOR UNESCO PRACTICE BECAUSE IT DOES NOT
LIMIT THE CCR TO "GENERAL" REPORTS AND RECOMMENDATIONS.
IT PROVIDES IN PART THAT THESE REPORTS SHALL CONTAIN
ALSO "RECOMMENDATIONS WHICH THE COMMITTEE MAY
WISH TO MAKE EITHER GENERALLY OR REGARDING THE DIS-
POSITION OF A COMMUNICATION UNDER CONSIDERATION." THIS
ENABLES THE CCR TO INCORPORATE VERY SPECIFIC CONCLU-

SIONS ABOUT PARTICULAR CASES BESIDES COMMENTING IN
GENERAL ON THE APPLICATION OF THE PROCEDURES.

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10. USDEL WOULD LIKE TO REEMPHASIZE NEED FOR US REP.
TO 104TH EXECUTIVE BOARD TO BE ADEQUATELY PREPARED TO
ENSURE THAT WG'S RESOLUTION WILL BE ADOPTED WITHOUT
SIGNIFICANT CHANGES. ADVANCE CONSULTATIONS WITH
FRIENDLY GOVERNMENTS ON THIS ISSUE WOULD APPEAR TO BE
DESIRABLE. THE SAME STEPS MIGHT ALSO HAVE
TO BE TAKEN TO ENSURE THAT US IS REPRESENTED ON THE CCR
WHEN THAT BODY BEGINS TO EXERCISE ITS FUNCTIONS UNDER
THE NEW RULES (I.E. AT THE 20TH GENERAL CONFERENCE).

11. PROFESSOR BUERGENTHAL PLANS TO RETURN DIRECTLY TO
AUSTIN AND WILL CONSEQUENTLY NOT BE ABLE TO STOP
IN WASHINGTON FOR DEBRIEFING. HE WOULD THEREFORE LIKE
TO NOTE HERE HIS PROFOUND GRATITUDE TO AMBASSADOR
TORRES AND MR. WARVARIV FOR THEIR MOST VALUABLE
COUNSEL AND SUPPORT. AMBASSADOR TORRES' TIMELY AND
MOST EFFECTIVE PRIVATE INTERVENTIONS WITH THE WG
CHAIRMAN PROVED TO BE OF TREMENDOUS HELP TO USDEL.
TORRES

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: HUMAN RIGHTS
Control Number: n/a
Copy: SINGLE
Draft Date: 20 jan 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978PARIS01904
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780031-0525
Format: TEL
From: PARIS
Handling Restrictions: n/a
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Litigation History:
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Office: ACTION IO
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 PARIS 1281
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 07 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3740703
Secure: OPEN
Status: NATIVE
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TAGS: AORG, OCON, PORG, SHUM, UNESCO
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/911dc7e1-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
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